IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17378 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUKHDEVSING @ SUKHA SUJASING SOHEL (SARDAR)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17378 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Ms. Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 22/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that three FIRs were registered against him before Jawaharnagar police station, City police station and DCB Police Station at C.R.No. 53 and 118 of 2002 and 55 of 2003 respectively with respect to offences punishable under sections 435,447,379, 465, 466 and 471 of IPC and other offences.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner. On the strength of the aforesaid three registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in illegal activities, he was ordered to be detained by the impugned order.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. The petitioner has challenged the said order on several grounds. It has been contended that the petitioner's representation was not properly considered by the appropriate authority and, therefore, the valuable right of the petitioner of making effective representation under Article 22(5) of the Constitution has been frustrated and, therefore, the order of detention cannot be sustained in the eye of law.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. Learned Advocate for the petitioner has produced on record a communication received from the concerned authorities along with the orders. They are taken on record.

7. It has been argued that the petitioner had submitted his representation to the detaining authority on 2.12.2003. A copy of the said representation has been placed at Annexure 'C' to the petition. It has been contended that the said representation was not promptly disposed of by the concerned authority. The

communication issued by the Commissioner of Police to the Government dated 6.12.2003 would disclose that the representation dated 2.12.2003 was received by the office on 6.12.2003 and it was forwarded to the Government on 6.12.2003. There is no further material on record to show as to how the representation was dealt with. However, the State Government has sent a communication dated 22.12.2003 to the petitioner stating that the aforesaid representation dated 2.12.2003 was rejected by the State Government on 22.12.2003. Learned Advocate for the petitioner argues that there was a delay in dealing with the said representation. As against this, the learned AGP has argued that the representation dated 2.12.2003 was forwarded by the Police Commissioner to the Government which was received by the Government on 18.12.2003 and thereafter it was promptly processed and disposed of. The letter on record written by the Commissioner of Police clearly suggests that the said office had forwarded the representation on 6.12.2003. It would therefore, be difficult to accept the argument of the learned AGP that it was received by the State Government on 18.12.2003. The communication was made from Vadodara City and it was addressed at Gandhinagar. Considering the distance between the two cities, it would not be probable that the representation despatched on 6.12.2003 would reach the hands of the State Government on 18.12.2003. There is no affidavit on this aspect also.

8. This shows that either there was a delay in despatching the communication from the Office of the Commissioner of Police or there was delay in processing the said representation before the Government. Any way, it cannot be said that the representation of the petitioner was dealt with and decided within a reasonable time. The delay is not routine or ordinary and inordinate delay has not been explained to any extent. Therefore, the representation of the petitioner has not been disposed of within reasonable time. When the provision made in Article 22 (5) provides for guarantee to the detenu to submit effective representation, it impliedly provides for due consideration to the representation within reasonable time. Otherwise, there would be no fun in making provision for providing constitutional right to the detenu to submit effective representation against his detention. Therefore, the right to submit effective representation is coupled with right to get the representation decided within reasonable time. In the present case, we find that the representation of the petitioner is not found to have been dealt with and decided within reasonable time and

the delay has not been explained and, therefore, the right of the detenu can be said to have been impliedly denied to the petitioner. In that view of the matter, the further continuance of the detention of the petitioner cannot be justified and, therefore, the petitioner would be entitled to be released from detention. This can be done by quashing the order of detention.

9. For the foregoing reasons, this petition is allowed. The impugned order dated 22.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp